

23rd June, 2020

Matthew Hill
Chief Executive
The Rookery (3rd floor)
2 Dyott Street
London
WC1A 1DE

Consultation on ongoing competence

Dear Matthew

The Chartered Institute of Patent Attorneys (CIPA) is the professional body for patent attorneys in the UK and is the Approved Regulator for the profession under the Legal Services Act 2010. CIPA has delegated its regulatory responsibilities to the Intellectual Property Regulation Board (IPReg). This response to the LSB's call for evidence into the ongoing competence of legal services professionals draws on CIPA's extensive experience of supporting its members as they undertake initial professional formation, working towards both UK and European qualifying examinations, and providing career-long continuing professional development for members.

Patent attorneys are, by first professional identity, scientists, technologists and engineers. This is a prerequisite for a successful career as a patent attorney, as a detailed understanding of the patented invention and the field of its application is essential. On entering the profession, trainee patent attorneys usually have degrees or higher degrees in science or engineering. Those entering the profession with doctorates will have spent up to ten years in higher education.

For their professional formation as a patent attorney, trainees study IP law (especially patents, trade marks, designs, related aspects of copyright and some other related IP rights) and its application within firms (private practice) and the industrial departments of companies (in-house). This study may include time in higher education, supported study at work or through CIPA education programmes and personal study. After qualification as a patent attorney, litigation skills must also be obtained and remaining in good professional standing requires CPD which goes beyond IP law and practice, to include advances in science and technology. CIPA's Journal, webinars, seminars and conference programme provides CPD for its members. Patent attorneys will also remain closely affiliated to the scientific and engineering professional bodies associated with their technical expertise.

Alongside qualification as a UK Registered Patent Attorney (RPA) and Fellow of CIPA, trainee patent attorneys will also work toward the European Qualifying Examination (EQE). Qualification as a European Patent Attorney and registration with the Institute of Professional Representatives before the European Patent Office (*epi*) is essential for UK patent attorneys to represent clients at the European Patent Office (EPO). As the UK's membership of the European Patent Convention (EPC) is not affected, CPD in European patent law and practice is an essential element of ongoing competence.

UK patent attorneys will also instruct, or will receive instructions from, attorneys from around the world. Many, both in private practice and in-house, will be directly involved in IP rights in jurisdiction beyond the UK and the EPO. The professional identity of a UK patent attorney is complex and multi-faceted, going beyond the scope of the Legal Services Act and the regulatory footprint of IPReg. A competency framework covering IP legal services professionals would need to address this complexity.

CIPA

The Chartered Institute of Patent Attorneys

2nd Floor, Halton House
20-23 Holborn
London EC1N 2JD
T: 020 7405 9450
F: 020 7430 0471
E: mail@cipa.org.uk
W: cipa.org.uk

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Measuring CPD: input versus output

It is this complexity and the uniqueness of the patent attorney profession that leads CIPA to conclude that it would not be practicable or desirable to have a single, overarching competence framework for all legal services professionals. Patent attorneys, trade mark attorneys, solicitors, barristers and others undertake professional formation following different and distinctive routes. Career-long competence will look very different for a patent attorney compared to, say, a cost lawyer or a legal executive. CIPA urges the LSB to be cognisant of these differences in any recommendations it makes about ongoing competence.

This does not mean that CIPA is opposed to recommendations to improve the codification and maintenance of competence. The skills and knowledge required for practice as a UK patent attorney are clearly defined in the UK qualifying examinations set by the Patent Examination Board (<https://www.cipa.org.uk/patent-examination-board/>). CIPA is currently reviewing these standards as part of the Mercer Review of the Education, Training and Assessment of UK Chartered Patent Attorneys. The core of a patent attorney's CPD and, therefore, ongoing competence will always include refreshing and revisiting these skills and knowledge.

The present system of CPD deployed by the Intellectual Property Regulation Board (IPReg) focusses on the simple accumulation of hours. There would be some merit in reviewing this within a competency framework to address the application of skills and knowledge honed through CPD in practice (reflective practice). A barrier in assuring the competence of legal professionals is the link, or lack thereof, between undertaking CPD and demonstrating the resulting impact on practice. It cannot be the case that CPD is or becomes solely for the purpose of 'doing CPD'.

The pros and cons of input versus an output approaches to measuring CPD and ongoing competence has been researched and discussed by the Professional Associations Research Network (PARN). Rather than rehearse these arguments here, the LSB should take into its review the research of PARN

(https://www.parnglobal.com/Public/Research/CPD_Tab/Approaches_to_CPD_Measurement.aspx).

The business-to-business relationship

Patent attorneys operate, generally, in a business-to-business relationship. Even when potential clients are 'consumers' in the traditional legal services sense, they are so from a business perspective, looking to protect their creativity and take products to market. This informs the way clients make judgements about the quality of advice and services received, which may extend beyond legal services to include business development. There is, however, a wide difference in understanding of clients in terms of what advice they need and their ability to assimilate advice and information given. Some skills required for advising lay clients are irrelevant where the attorney is only dealing with attorneys in other jurisdictions and so could not form a required competence to practise.

Client feedback could have a valuable role in maintaining and building competence, with a system of client-based appraisal offering pointers to the service received and feedback to inform future professional development planning. Assurance comes as much from the business-to-business nature of the relationship as it does from the regulatory process. Given the lifespan and complexity of the client-attorney relationship, it would be difficult to be prescriptive about the frequency of feedback. An alternative approach would be for attorneys to build 360-degree feedback into their relationships with clients.

Non-core or 'soft' skills

It is possible to define with a great degree of accuracy and certainty the skills and knowledge required to become a patent attorney. It follows, therefore, that measuring ongoing competence should be achievable within these parameters. Patent attorneys will, however, need to extend their skills and knowledge beyond this threshold for practice as their careers develop, for example in preparation for partnership; when moving between in-house and private practice; when taking on leadership roles; when starting a new business.

These non-core or 'soft' skills and knowledge are an essential part of ongoing competence but will not be found within a competence framework. They will differ from individual to individual and will be more or less important at points in a patent attorney's career. There are other non-core skills and knowledge that form a part of ongoing competence, such as diversity and inclusion, and tutoring skills. CIPA would not want to see an ongoing competence regime which focussed on the 'hard' professional skills and knowledge required for legal practice at the expense of the 'soft' skills and knowledge required for personal growth and career advancement.

CIPA has a great interest in the LSB's research into ongoing competence, in our overarching supervisory role of IPReg under the Internal Governance Rules but more so in our role as a provider of CPD for our members and in the guidance that we can offer our members in training and developing their staff. Hopefully we have opened further lines for enquiry through this submission and we would be delighted to explore the ongoing competence of patent attorneys with the LSB as you develop your thinking in this area.

Yours sincerely



Lee Davies
Chief Executive